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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/523,568 | 07/29/2005 | Alexander Van Geen | A35420-PCT-USA | 5854 |
| 21003 | 7590 | 10/20/2006 | EXAMINER | |
| BAKER & BOTTS 30 ROCKEFELLER PLAZA 44TH FLOOR NEW YORK, NY 10112-4498 | | | PUNNOOSE, ROY M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2877 | |

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/523,568

Applicant(s)

VAN GEEN, ALEXANDER

Examiner

Roy M. Punnoose

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>1/28/2005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because the recitation of “a test water” in section (b) creates doubt as to whether this is a different test water or if it is the same test water that is recited in the preamble. Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the OPTICAL PROBES must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Art Unit: 2877

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, D. L., and M. E. Q. Pilson, "Spectrophotometric Determination of Arsenite, Arsenate, and Phosphate in Natural Waters," *Analytica Chimica Acta*, 58, p. 289-299, 1972 in view of what is well-known in the art.

5. Claim 1 is rejected because:

- A. Johnson, D. L., and M. E. Q. Pilson (Johnson et al hereinafter) teach of a method comprising, adding reducing agent to the water sample (see page 290, 1st paragraph), adding a color reagent to the test water sample aliquot (see page 293) and using measured light absorbances obtained with a spectrophotometer (see title) to calculate the arsenic concentration in the water sample, for quantitative determination of arsenic concentration in a water sample in the field.
- B. However, Johnson et al does not explicitly teach of using optical probes to measure light absorbance of the color complexes formed to calculate the arsenic concentration in the water sample, for quantitative determination of arsenic concentration in a water sample in the field.
- C. Johnson et al teach of spectrophotometric measurements (see title) to calculate the arsenic concentration in the water sample, for quantitative determination of arsenic concentration

Art Unit: 2877

in a water sample in the field. Use of colorimeter with optical probe to measure absorbance is well-known in the art.

D. In view of Johnson et al's teaching and what is well-known in the art, it would have been obvious to one of ordinary skill in the art to incorporate the use of a colorimeter with optical probe of a into Johnson et al's method due to the fact that measuring absorbance with an optical probe is easier because the probes can be easily transported to a site in the field where the measurements are to be made.

6. Claim 2 is rejected for the same reasons of rejection of claim 1 above and because Johnson et al teach of adding an oxidizing agent to the water sample (see page 291).

7. Claim 3 is rejected for the same reasons of rejection of claim 1 above and because in view of Johnson et al's teaching of the use of spectrophotometer, it would have been obvious to one of ordinary skill in the art to use a portable calorimeter and any desired wavelength such as infrared radiation having a wavelength of about 880 nm to obtain a desired result in the quantitative determination of arsenic concentration in a water sample in the field.

8. Claims 4 and 5 are rejected for the same reasons of rejection of claim 1 above and because in view of Johnson et al's teaching and what is well-known in the art, it would have been obvious to one of ordinary skill in the art to add various types of reagents or color complexes to the water sample to obtain a desired result.

9. Claims 6-10 are rejected for the same reasons of rejection of claims 1-5 above and because in view of Johnson et al's teaching of the use of spectrophotometer and what is well-known in the art, it would have been obvious to one of ordinary skill in the art to:

Art Unit: 2877

- a. Have a cuvette to hold a sample aliquot; a light emitting diode which is configured to radiate light on to the cuvette; a photodetector for measuring the intensity of light transmitted through the held sample aliquot; and an electronic component to process the voltage output of the photo detector.
- b. Use a pair of optical probes that are disposed in a dual-beam arrangement in the portable colorimeter, and using a first probe in the pair to measure light absorbance in the first sample aliquot, and the second probe in the pair to measure light absorbance in the second sample aliquot, wherein the responses of the optical probes in the pair are normalized with respect to each other, and wherein the light absorbance in the first and the second sample aliquots is measured sequentially or concurrently, for quantitative determination of arsenic concentration in a water sample in the field.

Contact/Status Information

10. Several facts have been relied upon from the personal knowledge of the examiner about which the examiner took Official Notice in this office action. Applicant must seasonably challenge well known statements and statements based on personal knowledge when they are made. In re Selmi, 156 F.2d 96, 70 USPQ 197 (CCPA 1946); In re Fischer, 125 F.2d 725, 52 USPQ 473 (CCPA 1942). See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice). If applicant does not seasonably traverse the well-known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d

Art Unit: 2877

71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, applicant is charged with rebutting the well-known statement in the **next reply** after the Office action in which the well known statement was made.

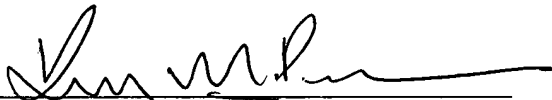
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Roy M. Punnoose** whose telephone number is **571-272-2427**.

The examiner can normally be reached on 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gregory J. Toatley, Jr.** can be reached on **571-272-2800 ext.77**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 15, 2006


Roy M. Punnoose
Patent Examiner
Art Unit 2877